

IT IS ORDERED

Date Entered on Docket: March 28, 2023



The Honorable David T. Thuma
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

MELVIN GENE HARPER AND
KAREN GAYLE HARPER,
Debtors.

Case No. 22-10663-t7

**STIPULATED ORDER MODIFYING THE AUTOMATIC STAY AND ORDERING
ABANDONMENT OF ESTATE PROPERTY**

This matter came before the Court upon the stipulation of creditor Valley Bank of Commerce (“VBC”), Chapter 7 Trustee Phillip J. Montoya (the “Trustee”), and debtors Melvin Gene Harper and Karen Gayle Harper (the “Debtors”) as shown by the signature of their respective counsel below. The Court, having reviewed the record and being sufficiently advised, hereby FINDS:

- A. This Court has jurisdiction over this proceeding pursuant to 11 U.S.C. §§ 362 and 554, 28 U.S.C. §§ 157 and 1334, and Fed. R. Bankr. P. 4001(a).
- B. Venue in this Court is proper pursuant to 28 U.S.C. § 1409.

C. The Debtors commenced this voluntary chapter 7 bankruptcy case (the “Bankruptcy Case”) on August 16, 2022 (the “Petition Date”).

D. Phillip J. Montoya (the “Trustee”) was appointed as Chapter 7 Trustee and continues to serve in that capacity.

E. VBC is a secured creditor in this Bankruptcy Case.

F. On January 25, 2023, VBC filed Creditor Valley Bank of Commerce’s Motion for Relief From the Automatic Stay and for Abandonment of Property (the Stay Motion”) (Doc. No. 37).

G. On January 25, 2023, VBC filed and served a notice of deadline to object to the Stay Motion (Doc. No. 39), providing for an objection deadline of 21 days from the date of service of the notice, plus three days.

H. Notice of the Stay Motion was sufficient in form and content.

I. On February 29, 2023, the Trustee filed his objection to the Stay Motion (Doc. No. 43) (the “Objection”).

J. No other objections were filed, timely or otherwise.

K. The objections filed by the Trustee are resolved by this Order.

L. The Court being advised of all parties’ approval of this Order; and the Court having considered the Stay Motion, now enters this Order.

IT IS THEREFORE ORDERED:

1. The Stay Motion is granted as set forth herein.

2. The automatic stay is hereby modified to permit VBC to exercise its non-bankruptcy law rights and remedies as to the Personal Property.¹

¹ All capitalized but undefined terms used herein are assigned the definitions set forth in the Stay Motion.

3. The Trustee is deemed to have abandoned the Personal Property pursuant to 11 U.S.C. § 554(b) as of the date this Order is entered.

4. If the Trustee does not close on a sale of the Real Property and remit to VBC funds in the amount of \$485,019.03 on or before April 28, 2023, the automatic stay shall be modified, without further order of the Court, to permit VBC to exercise its non-bankruptcy law rights and remedies to the extent needed to initiate a state court action to obtain an *in rem* foreclosure judgment as to the Real Property, dispose of the Real Property as ordered by the state court judge, and apply the proceeds of the sale in accordance with applicable non-bankruptcy law.

5. This Order does not waive VBC's claim against the Estate for any deficiency owed by the Debtors after any sale or other disposition of the Real Property and the Personal Property. VBC may file an amended proof of claim this Bankruptcy Case within thirty (30) days after a sale(s), should it claim that Debtors owe any amount after the sale of the Real Property and the Personal Property.

6. The Debtors shall turn over the Personal Property to VBC within ten (10) days of entry of this Order.

7. This Order shall continue in full force and effect if this case is dismissed or converted to a case under another chapter of the Bankruptcy Code.

8. This Order is not stayed as provided by Fed. R. Bankr. P. 4001(a)(3).

*** END OF ORDER ***

Submitted by:

WALKER & ASSOCIATES, P.C.

By: s/submitted electronically 3.27.2023

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Approved:

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/s/ Approved by email 3.27.2023

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